

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**Case No. 8:03-CR-77-T-30TBM**

**HATEM NAJI FARIZ**  
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**MOTION TO FILE ON THE RECORD THE DEFENDANTS' PROPOSED  
EXHIBIT INDEXES FOR THE JURY AND THE EXHIBIT LISTS  
GIVEN TO THE JURY, AND RENEWAL OF  
MR. FARIZ'S OBJECTIONS FOR THE RECORD**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, hereby respectfully requests that this Honorable Court allow Mr. Fariz to file on the record the exhibit lists that the Defendants proposed to give to the jury, which were provided to the Court during the hearing on November 14, 2005. While the Court heard argument and ruled from the bench on the Defendants' proposals, the exhibit indexes have not yet been filed on the record. Mr. Fariz also requests that the exhibit lists given to the jury be filed on the record, either by the Court or the government. Finally, by this motion, Mr. Fariz renews his objections to the jury receiving copies of the exhibit lists.

**I. Defense Exhibit Lists**

Attachment A consists of the Defendants' proposed index of the government exhibits and proposed index of their own exhibits. As argued more fully during the hearing, the Defendants submitted these indexes in place of the more detailed exhibit lists, in an attempt

to omit the detailed information that would tend to unduly influence the jury or unfairly prejudice the defense. The indexes would instead assist the jury in locating evidence.

Attachment B is the Defendants' alternative proposed list of government exhibits, which maintained the exhibit-by-exhibit approach.<sup>1</sup>

Finally, Attachment C is the index that counsel for Mr. Fariz provided to the Court on November 14, 2005, which will be given to the jury for Mr. Fariz's exhibits. The exhibit index had been amended to include two exhibits that had been admitted.

## **II. Mr. Fariz's Request that the Exhibits Lists that Were Given to the Jury Be Filed on the Record and Renewed Objections to the Exhibit Lists**

Mr. Fariz requests that the exhibit lists that were given to the jury be filed on the record. The final versions do not appear to have been filed, and Mr. Fariz would request that the exhibit lists be made a part of the record.

In making this request, Mr. Fariz renews his objections to providing the jury with these exhibit lists. A jury in a criminal trial is not normally provided an exhibit list. While the defense agreed in principle that the jury in this case could be provided some exhibit lists given the volume of exhibits to help them locate items of evidence, upon further extensive review, defense counsel realized that the government's proposed exhibit list could not be provided to the jury without undue influence on the jury and unfair prejudice to the defense.

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<sup>1</sup> The highlighted portions on this list refer to certain exhibits that may have needed to be addressed if this list were provided to the jury.

The government's proposed exhibit list is entirely improper to give to the jury, because the list, *inter alia*, (1) purports to *identify* factually what an exhibit actually is for the jury, including identifying the individuals in videos or photographs, the event on a video, the topic or title of a document (even when the exhibit itself is in Arabic), the speakers in a telephone conversation, the sender and recipient of an e-mail, and so forth; and (2) purports to tell the jury what an exhibit *shows* in the context of the government's theory of the case, including a description of what the exhibit shows and its relation, if any, to a count or overt act in the Superseding Indictment. The exhibit list also improperly purports to inform the jury where some of the witnesses worked (*e.g.*, that Timothy Shavers was from the Department of Homeland Security). In many cases, the exhibit list provides the jury with so much information that the jury may decide, improperly, to rely on the exhibit list and find that looking at the actual exhibit is unnecessary.

After the Court heard arguments on the exhibit lists, the Court informed the jury that the exhibits would be kept in the courtroom separate from the jury room. The jury will therefore have to ask the court security officer for access to particular exhibits, and the exhibits will either be brought into the jury room or the jury will go into the courtroom to see the exhibits. This process increases the tendency for the jury to forego looking at the actual exhibits and use the exhibit list alone in their deliberations.

The jury is the finder of fact in this trial and should therefore undertake its own careful review of the evidence in this case. It is improper to provide such an exhibit list which contains additional detail about an exhibit, and its relation to the case (if any), going

beyond what is simply necessary to *locate* an exhibit (the purported need for such a list). The jury is required to decide the case based on its own memories and conclusions about the evidence, not on the government's summary of the case. The exhibit list given to the jury unfairly injects government proposed fact-finding into the jury deliberations, where the jury should be deliberating without such unfair and undue influence. Accordingly, Mr. Fariz renews his objections to the exhibit lists provided to the jury.

### **III. Conclusion**

WHEREFORE Defendant, Hatem Naji Fariz, respectfully requests that this Honorable Court allow Mr. Fariz to (1) file on the record the exhibit lists that Mr. Fariz proposed be given to the jury, which were provided to the Court during the hearing on November 14, 2005, and (2) request that the exhibit lists given to the jury be filed on the record. Finally, Mr. Fariz renews his objections to providing the jury with the exhibit lists.

Respectfully submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of November, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo  
M. Allison Guagliardo  
Assistant Federal Public Defender